

**CONTRACT #3**

**RFS # N/A**

**FA # N/A**

**University of Tennessee**

**VENDOR:**

**University of Tennessee  
Research Foundation (UTRF)**

**(Tennessee Solar Institute)**



February 11, 2010

Mr. Jim White  
Executive Director  
Fiscal Review Committee  
320 Sixth Avenue, North – 8<sup>th</sup> Floor  
Nashville, TN 37243-0057

RECEIVED

FEB 12 2010

FISCAL REVIEW

Dear Mr. White:

The University of Tennessee is submitting for the committee's review a non-competitively bid contract with the University of Tennessee Research Foundation (UTRF) to assist the university in conducting activities associated with the Tennessee Solar Institute recently established by the State of Tennessee.

Under this contract, UTRF will provide administrative and programmatic support for the implementation of initiatives detailed in the U.S. Department of Energy's (DOE) State Energy Program American Recovery and Reinvestment Act (SEP-ARRA) grant awarded to the Department of Economic and Community Development (ECD). Specifically, UTRF will establish and administer a "Solar Opportunity Fund" that will support two specific activities allowable under DOE regulations and SEP-ARRA guidelines:

- 1) The Solar Innovation Grants program will offer competitively awarded grants to for-profit industry firms in Tennessee. This program is intended to encourage the continued growth in Tennessee's solar industry.
- 2) The Solar Installation Grants program will provide matching dollars for qualified applicants for the installation of small scale photovoltaic (PV) solar technology. This program will spur the implementation of solar technology across Tennessee.

In addition to the above mentioned grants programs, UTRF will develop and manage strategic partnerships to support technical assistance and commercialization to Tennessee's solar industry, conduct workforce development sessions and hold annual seminars to promote the solar network. A database of solar related resources will be developed and maintained through a strong web presence that will promote partnerships and create awareness of Tennessee's unique resources for this industry. All of these programs will be housed at the newly

established Tennessee Solar Institute, a center of excellence at the University of Tennessee and Oak Ridge National Laboratory.

Funding for this contract is provided through a DOE SEP-ARRA award to the state Department of Economic and Community Development (ECD). ECD has been working with DOE to finalize the program's implementation regulations and has just received from DOE the information needed to move this project forward. Given that all funds must be expended by April 30, 2012 and that time is a critical factor, we regrettably acknowledge that this contract is being submitted in a untimely manner for your review but believe it is important to request the committee's understanding in this unusual situation so we can proceed with implementation as soon as possible.

If you have any questions or need additional information, please don't hesitate to contact me.

Respectfully,

A handwritten signature in cursive script, reading "Stacey S. Patterson".

Stacey S. Patterson, Ph.D.  
Director of Research Partnerships

Attachment

c: Jan Simek  
David Millhorn  
Butch Peccoio  
Gary Rogers  
Randy Gentry  
Anthony Haynes  
Mary McDonald

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Stacey Patterson	*Contact Phone:	865-974-3140
*Original Contract Number:		*Original RFS Number:	
Edison Contract Number: <i>(if applicable)</i>	N/A	Edison RFS Number: <i>(if applicable)</i>	N/A
*Original Contract Begin Date:	February 1, 2010	*Current End Date:	April 30, 2012
Current Request Amendment Number: <i>(if applicable)</i>	N/A		
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A		
*Department Submitting:	University of Tennessee		
*Division:	University-wide Administration		
*Date Submitted:	January 14, 2010		
*Submitted Within Sixty (60) days:	No		
<i>If not, explain:</i>	Federal ARRA funded contract with defined time period for expenditure of grant award. Just received authority to proceed with award and desire to begin program implementation as soon as possible.		
*Contract Vendor Name:	UT Research Foundation		
*Current Maximum Liability:	\$27,025,892.00		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY: 2010	FY: 2011	FY: 2012	FY:      FY      FY
\$9,137,000	\$16,711,000	\$1,177,892	\$      \$      \$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>			
FY:	FY:	FY:	FY:      FY      FY
\$	\$	\$	\$      \$      \$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		N/A – new initiative	
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		N/A – new initiative	

Supplemental Documentation Required for  
Fiscal Review Committee

IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		N/A – new initiative	
*Contract Funding Source/Amount:	State:	Federal:	\$27,025,892 (DOE Grant award to ECD)
Interdepartmental:		Other:	
If "other" please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A		N/A	
Method of Original Award: <i>(if applicable)</i>			
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$ 27,025,892	

The maximum contract liability is based on the delivery of services defined in the grant to ECD approved by the Department of Energy.

## Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

**Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.**

Deliverable description:	FY: 2010	FY: 2011	FY: 2012	FY:	FY:
See Attached	Schedule 1	Schedule 1	Schedule 1		

**Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.**

Deliverable description:	FY: 2010	FY: 2011	FY: 2012	FY:	FY:
	N/A				

**Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.**

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
N/A*					
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
N/A*					
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
N/A*					

## Supplemental Documentation Required for Fiscal Review Committee

### Explanation for Use of UT Research Foundation

The University of Tennessee established the UT Research Foundation to support the University of Tennessee in fulfilling its research, commercialization, and economic development functions, all which are core functions of the Tennessee Solar Institute. Utilizing UTRF's services enables the University in fulfilling the requirements set forth in the state of Tennessee's DOE SEP-ARRA plan in a coordinated effort to ensure successful implementation and accountability of these funds on behalf of the State of Tennessee.

## ATTACHMENT 1

SERVICE DELIVERABLE	FY 2010	FY 2011	FY 2012
<b>Program Development</b>			
Solar Institute Implementation Plan completed. This plan shall include a plan for execution, organizational structure, staffing plan, responsibilities and budget within UTRF.	\$100,000.00	\$0.00	\$0.00
Tennessee Solar Institute website developed and launched.	\$65,000.00	\$0.00	\$0.00
Marketing plan for Solar Institute activities, including grant programs and commercialization opportunities completed.	\$50,000.00	\$0.00	\$0.00
Regional solar conferences held. (\$200,000 per conference)	\$0.00	\$200,000.00	\$200,000.00
<b>Grant Administration</b>			
Contracts Management Database created.	\$50,000.00	\$0.00	\$0.00
Grant criteria, program materials, application forms, proposal communication, application review processes, contract documents, and monitoring plan for Solar Installation Grants Program completed and approved.	\$125,000.00	\$0.00	\$0.00
Obligation of 25% Solar Installation Grants achieved	\$2,250,000.00	\$0.00	\$0.00
Obligation of 50% Solar Installation Grants achieved	\$2,250,000.00	\$0.00	\$0.00
Obligation of 75% Solar Installation Grants achieved	\$0.00	\$2,250,000.00	\$0.00
Obligation of 100% Solar Installation Grants achieved	\$0.00	\$2,250,000.00	\$0.00
Grant criteria, program materials, application forms, proposal communication, application review processes, contract documents, and monitoring plan for Solar Innovation Grants Program completed and approved.	\$140,000.00	\$0.00	\$0.00
Approval of 25% Solar Innovation Grants by merit review team achieved.	\$3,625,000.00	\$0.00	\$0.00
Approval of 50% Solar Innovation Grants by merit review team achieved.	\$0.00	\$3,625,000.00	\$0.00
Approval of 75% Solar Innovation Grants by merit review team achieved.	\$0.00	\$3,625,000.00	\$0.00
Approval of 100% Solar Innovation Grants by merit review team achieved.	\$0.00	\$3,625,000.00	\$0.00



<b>Program Operations, Reporting and Monitoring</b>			
Satisfactory monthly progress achieved as documented through monthly progress report. Monthly progress reports shall include a detailed list of all activities completed during the month including, but not limited to, operational, grant administration, workforce development, marketing, public education, strategic industry partnership development activities; a detailed monthly expense report; and any other information requested by UT pertaining to this project. (\$85,000 per monthly report)	\$430,000.00	\$1,032,000.00	\$860,000.00
Detailed quarterly financial monitoring report on Solar Institute Activities, including all information needed for 1512 Report completed and approved. (\$6,500 per report)	\$13,000.00	\$26,000.00	\$26,000.00
Detailed quarterly report of industry partnership development and technical assistance activities that show impact of activities on Tennessee businesses completed. (\$6,500 per report)	\$13,000.00	\$26,000.00	\$26,000.00
Detailed quarterly report of workforce development activities showing impact of activities on the workforce completed. (\$6,500 per report)	\$13,000.00	\$26,000.00	\$26,000.00
Detailed quarterly performance report on energy consumption activities supported by the Institute including energy savings, renewable energy installed, and GHG emission reductions. (\$6,500 per report)	\$13,000.00	\$26,000.00	\$26,000.00
Project Close-out Report completed.			\$13,892.00
<b>Totals</b>	<b>\$9,137,000.00</b>	<b>\$16,741,000.00</b>	<b>\$1,177,892.00</b>

<b>Total</b>	<b>\$27,025,892.00</b>
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# CONTRACT SUMMARY SHEET

021406

<b>RFS #</b>	<b>Contract #</b>
<b>State Agency</b>	<b>State Agency Division</b>
University of Tennessee	
<b>Contractor Name</b>	<b>Contractor ID # (FEIN or SSN)</b>
UT Research Foundation	<input type="checkbox"/> C- or <input type="checkbox"/> V- 62-6047697

<b>Service Description</b>			
Tennessee Solar Institute			
<b>Contract BEGIN Date</b>	<b>Contract END Date</b>	<b>Subrecipient or Vendor?</b>	<b>CFDA #</b>
2/1/2010	4/30/2012	Vendor	

<b>Mark Each TRUE Statement</b>					
<input type="checkbox"/> Contractor is on STARS			<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts		
<b>Allotment Code</b>	<b>Cost Center</b>	<b>Object Code</b>	<b>Fund</b>	<b>Funding Grant Code</b>	<b>Funding Subgrant Code</b>
332.17	N/A	N/A	N/A	N/A	N/A
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2010		\$ 9,137,000.00			\$ 9,137,000.00
2011		\$ 16,711,000.00			\$ 16,711,000.00
2012		\$ 1,177,892.00			\$ 1,177,892.00
					\$ -
					\$ -
					\$ -
<b>TOTAL</b>	\$ -	\$ 27,025,892.00	\$ -	\$ -	\$ 27,025,892.00

<b>— COMPLETE FOR AMENDMENTS ONLY —</b>			<b>State Agency Fiscal Contact &amp; Telephone #</b>
<b>FY</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>THIS Amendment ONLY</b>	Dr. Stacey Patterson 865-974-3140
			<b>State Agency Budget Officer Approval</b>
			Dr. David Millhorn 865-974-4048
			<b>Funding Certification</b> (certification required by T.C.A. § 9-4-5113 that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)
<b>TOTAL</b>	\$ -	\$ -	
<b>End Date</b>			

<b>Contractor Ownership</b> (complete only for base contracts with contract # prefix: FA or GR)			
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business <input type="checkbox"/> NOT disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—

<b>Contractor Selection Method</b> (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)			
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method	
<input checked="" type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government (eg, ID, GG, GU)	<input type="checkbox"/> Other	

<b>Procurement Process Summary</b> (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)
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The Tennessee Solar Institute is a new state initiative that requires an aggressive start-up in order to fulfill the stated requirements in the DOE SEP-ARRA grant. Because the UT Research Foundation's mission is to support the university in its research, commercialization, and economic development functions, core functions of the Tennessee Solar Institute, the university believes the use of UTRF's services is the most viable solution to support the activities associated with the Tennessee Solar Institute.

**GRANT CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
UNIVERSITY OF TENNESSEE  
AND  
UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION**

This contract is made and entered into by the University of Tennessee, hereinafter referred to as "UT" or "University", and the University of Tennessee Research Foundation, hereinafter referred to as "UTRF" or "Contractor".

Whereas, the State of Tennessee has contracted with the University to create the Tennessee Solar Institute at UT and Oak Ridge National Laboratory ("ORNL") to serve as a center for excellence to spur accelerated growth in Tennessee's burgeoning solar industry and serve as a crossroad for a wide range of solar-related activities in the Volunteer State and,

Whereas, UTRF is a not-for-profit public benefit corporation formed to promote, support, and carry out UT's research mission, to enhance the competitive position of UT for research and development funding, to facilitate expanded research and development activities at UT, and to facilitate the commercialization of UT research outcomes and the transfer of research-generated technology from UT to commercial and industrial enterprises in furtherance of the economic development of the State of Tennessee and,

Whereas, UTRF's functions to support the University in fulfilling research, commercialization, and economic development activities, functions which are core to the Tennessee Solar Institute's mission, the University is engaging UTRF to provide the University support services for the development, implementation and management of the Tennessee Solar Institute, as further defined in the "SCOPE OF SERVICES".

**A. SCOPE OF SERVICES:**

- A.1. UTRF shall provide all services and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. UTRF acknowledges that funding for this work is being made by the American Recovery and Reinvestment Act (ARRA) funds and will implement processes and procedures that conform to all compliance, monitoring and reporting requirements applicable to these funds. Furthermore, UTRF shall require that any subcontractors and other recipients of ARRA are aware of and agree to comply with ARRA regulations.
- A.3. UTRF shall work closely with UT and ORNL to establish the initial activities within the Tennessee Solar Institute and to establish strategic industry partnerships across the solar value chain, that will provide technical assistance and workforce development to solar industry firms, assist in technology commercialization, help improve facilities and manufacturing processes, and undertake other efforts to help grow the solar industry in Tennessee.

SERVICE DELIVERABLE	MILESTONE
Solar Institute Implementation Plan completed. This plan shall include a plan for execution, organizational structure, staffing plan, responsibilities, budget and overview the program within UTRF.	February 2010
Contracts management database created.	February 2010

Solar Institute website developed and launched	February 2010
Develop web content and maintain an updated site.	February 1, 2010 – April 30, 2012
Marketing plan Solar Institute activities, including grant programs and commercialization opportunities created.	February 2010

- A.4. UTRF shall establish and administer a "Solar Opportunity Fund" at the Tennessee Solar Institute. The Solar Opportunity Fund will support two specific activities deemed allowable under DOE regulations and SEP-ARRA guidelines: "Solar Innovation Grants" and "Solar Installation Grants," which are described in A.5. and A.6. below.
- A.5. UTRF shall administer the "Solar Innovation Grants Program" at the Tennessee Solar Institute in accordance with the Tennessee's State Energy Program (SEP) ARRA plan and subsequent amendments approved by the United States Department of Energy (DOE) to encourage growth in Tennessee's solar industry. UTRF shall only award funds under this program to qualifying Tennessee solar industry firms seeking technical assistance, facility or process improvements, workforce development and other support allowable under DOE regulations and SEP-ARRA guidelines.

Specific responsibilities and milestones associated with the administration of the Solar Innovation Grants Program are:

SERVICE DELIVERABLE	MILESTONE
Grant criteria, program materials, application forms, proposal communication, application review process, contract documents and monitoring plan for Solar Innovation Grants completed and approved.	February 1, 2010 – April 30, 2010
Recruit merit review team for Solar Innovation Grants	February 1, 2010 – March 1, 2010
Solar Innovation Grant application process initiated.	1 <sup>st</sup> Round Grants May 2010 2 <sup>nd</sup> Round Grants October 2010 3 <sup>rd</sup> Round Grants (if needed) January 2011
Review Solar Innovation Grant proposals for merit based on established review criteria in the request for proposals (RFP)	1 <sup>st</sup> Round Grants June 2010 2 <sup>nd</sup> Round Grants November 2010 3 <sup>rd</sup> Round Grants (if needed) February 2011
Award Solar Innovation Grants for proposals with highest ranking scores	1 <sup>st</sup> Round Grants July 2010 2 <sup>nd</sup> Round Grants December 2010 3 <sup>rd</sup> Round Grants (if needed) March 2011
Monitor Solar Innovation Grant awards	May 2010 - April 30, 2012
Prepare and submit project progress reports, financial monitoring assessments, performance assessments as requested by the state as described in A.8 and A.9.	Monthly, Quarterly and Final

- A.6. To speed the deployment of solar energy, the UTRF shall establish and implement a "Solar Installation Grants Program" at the Tennessee Solar Institute in accordance with Tennessee's SEP ARRA plan and subsequent amendments approved by DOE. This program will assist qualifying Tennessee entities to purchase and install small-scale solar PV systems. "Small scale" will be defined as appropriately sized units on existing rooftops and parking shade structures, or 60kW systems or smaller installed on the ground within the boundaries of an existing facility.

Specific responsibilities and milestones associated with the administration of the Solar Installation Grants Program are:

SERVICE DELIVERABLE	MILESTONE
Grant criteria, program materials, application forms, proposal communication, application review process, contract documents and monitoring plan for Solar Installation Grants completed and approved.	February 1, 2010 – March 30, 2010
Application process for Solar Installation Grant Program initiated.	April 1, 2010 – March 31, 2011 or when the \$9M has been awarded
Conduct reviews of Solar Installation Grant Program applications for technical merit	April 15, 2010 – March 31, 2011 or when the \$9M has been awarded
Award Solar Installation Grants to qualified applicants	May 1, 2010 – March 31, 2011 or when the \$9M has been awarded
Monitor Solar Installation Grant awards	May 1, 2010 – April 30, 2012
Prepare and submit project progress reports, financial monitoring assessments, and performance assessments as requested by the state as described in A.8. and A.9.	Monthly, Quarterly and Final

- A.7. UTRF shall provide technical assistance and workforce development activities to establish and build strategic industry partnerships, awareness and relationships across the solar value chain. Specific responsibilities and milestones include:

SERVICE DELIVERABLE	MILESTONE
Develop and manage strategic partnerships to support technical assistance, commercialization, public education and other activities	February 1, 2010 – April 30, 2012
Hold Annual Regional Solar Conference	Seminars held during FY 2011 and 2012 with planning activities occurring throughout the grant period
Develop and maintain a database of experts in key solar technologies and services	February 1, 2010 – April 15, 2010
Prepare and submit detailed summary of partnership development activities, technical assistance activities and workforce development activities. These reports shall include the number of businesses seeking technical assistance, a detailed summary of training/workforce development activities completed, the number of workers trained, the number of businesses assisted and the type of assistance provided, any additional information requested by UT.	Quarterly
Prepare and submit detailed report of all marketing and public education activities. This report shall include the number and type of marketing activity completed, a summary of public appearances, a summary of any meetings attended, information on public education activities completed, other information requested by UT.	Quarterly

- A.8. Monthly progress reports shall be submitted within seven (7) business days of the close of each month. Reports shall include a detailed list of all activities completed during the month, including but not limited to:
- Operational activities – operational accomplishments, staffing developments, marketing developments, progress in meeting timeframes established in implementation plan
  - Detailed monthly expense report – funding obligated, number contracts awarded, funding expended by project, activity and cost category,...
  - Grant activities – list of grantees, grantee DUNS numbers, project summary, grantee award amount, detailed summary of project outcomes to include: job creation, energy savings, installed renewable energy capacity, number of projects, funding leveraged, GHG emission reductions
  - Workforce Development – number and type of workforce development activities,
  - Any other information requested by UT within the scope of this project.
- A.9. Quarterly financial, performance and monitoring reports shall be submitted to UT within seven (7) business days of the close of the Quarter. The reports shall include all information required to complete and submit the 1512 Report and any additional information requested by UT within the scope of this project.
- A.10. UTRF shall perform other activities as directed by the University within the scope of this project.

**B. CONTRACT TERM:**

This Contract shall be effective for the period commencing on February 1, 2010 and ending on April 30, 2012. UT shall have no obligation for services rendered by UTRF which are not performed within the specified period. The contract term may be extended by written agreement executed by all parties hereto and approved by the appropriate University officials in accordance with applicable State laws and regulations.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of UT under this Contract exceed Twenty-seven million, twenty-five thousand, eight hundred and ninety-two dollars (\$27,025,892.00). The payment rates in Section C.3 and the Travel Compensation provided in Section C.4 shall constitute the entire compensation due UTRF for the Service and all of UTRF's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by UTRF.

UTRF is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the University. The maximum liability represents available funds for payment to UTRF and does not guarantee payment of any such funds to UTRF under this Contract unless the University requests work and UTRF performs said work. In which case, UTRF shall be paid in accordance with the payment rates detailed in Section C.3 and Exhibit A. The University is under no obligation to request work from UTRF in any specific dollar amounts or to request any work at all from UTRF during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the University under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. UTRF shall be compensated based on the payment rates herein for units of service authorized by the University in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. Schedule 1 provides an estimated allocation of cost by Milestone and by fiscal year. The University shall in consultation with UTRF review planned expenditures on a monthly basis and may mutually agree to changes in maximum planned expenditures by category and fiscal year not to exceed the maximum liability as specified in Section C.1.

C.4. Travel Compensation. Compensation to UTRF for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and shall not exceed sixty-six thousand three hundred and sixty five dollars (\$66,365.00) during the period of the Contract.

C.5. Invoice Requirements. UTRF shall invoice to the University for anticipated and completed service and for the amount stipulated in Section C.3 above.

- a. UTRF agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information:

- (1) Invoice/Reference Number (assigned by the University);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the University to this Contract);
- (5) Account Name: Department of Economic and Community Development, Energy Policy Office;
- (6) Account/Customer Number (uniquely assigned by UTRF to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
  - i. Service Description for each service invoiced;
  - ii. Number of Units, Increments, or Milestones of each service invoiced;
  - iii. Applicable Payment Rate (as stipulated in Section C.3.) for each service invoiced;
  - iv. Amount Due by Service;
  - v. Travel Compensation requested in accordance with and attaching to the invoice appropriate documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations;" and
  - vi. Total Amount Due for the invoice period.

- b. UTRF understands and agrees that an invoice to the University under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

- c. UTRF agrees that timeframe for payment (and any discounts) begins when the University is in receipt of each invoice meeting the minimum requirements above.



- d. UTRF shall complete and sign a "Substitute W-9 Form" provided to UTRF by the University. The taxpayer identification number contained in the Substitute W-9 submitted to the University shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the University for services until the University has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the University shall not prejudice the University's right to object to or question any invoice or matter in relation thereto. Such payment by the University shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. UTRF's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the University, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. Pursuant to *Tennessee Code Annotated*, Section 9-4-604, the University, as an agency of the State is not to issue warrants for payments to persons who are in default to the State until such arrearages are paid. UTRF agrees that, should such an arrearage exist during the term of this Contract, the University shall have the right to deduct from payments due and owing to UTRF any and all amounts as are necessary to satisfy the arrearage. Should a dispute arise concerning payments due and owing to UTRF under this Contract, the University reserves the right to withhold said disputed amounts pending final resolution of the dispute.
- D. STANDARD TERMS AND CONDITIONS:**
- D.1. Required Approvals. The University is not bound by this Contract until it is approved by the appropriate University officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate University officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The University may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the University. The University shall give UTRF at least ninety (90) days written notice before the effective termination date. UTRF shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the University be liable to UTRF for compensation for any service which has not been rendered. Upon such termination, UTRF shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If UTRF fails to properly perform its obligations under this Contract in a timely or proper manner, or if UTRF violates any terms of this Contract, the University shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Any liability of UTRF to the University and third parties for any claims, losses, or costs arising out of or related to acts performed by UTRF under this agreement shall be governed by the Tennessee Claims Commission Act, *Tennessee Code Annotated*, Section 9-8-301, *et seq.*
- D.5. Subcontracting. UTRF shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the University. If such subcontracts are approved by the University, they shall contain, at a minimum, sections of this Contract below pertaining to "Nondiscrimination," and "Records" (as identified by



the section headings). Notwithstanding any use of approved subcontractors, UTRF shall be the prime contractor and shall be responsible for all work performed to the extent allowed by Tennessee law.

- D.6. Nondiscrimination. UTRF hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of UTRF on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. UTRF shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.7. Records. UTRF shall maintain documentation for all charges under this Contract. The books, records, and documents of UTRF, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the University or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.8. Monitoring. UTRF's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the University or their duly appointed representatives.
- D.9. Progress Reports. UTRF shall submit brief, periodic, progress reports to the University as requested.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. For the avoidance of doubt, the parties recognize that UTRF is staffed with UT employees who have no ownership or other equity financial interest in UTRF. UTRF may also contract with the University for services to fulfill certain contractual requirements.
- D.13. University Liability. The University shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

- D.16. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.17. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The University:

Dr. David Millhorn, Executive Vice President  
University of Tennessee  
813 Andy Holt Tower  
Knoxville, TN 37996  
millhorn@tennessee.edu  
Telephone # 865-974-4048  
FAX # 865-974-8240

UTRF:

Dr. Randy Gentry, President  
UT Research Foundation  
UT Conference Center, Suite 211  
600 Henley Street  
Knoxville, TN 37996-4122  
rgentry@utk.edu  
Telephone # 865-974-1843  
FAX# 865-974-2803

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of University and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the University reserves the right to terminate the Contract upon written notice to UTRF. Said termination shall not be deemed a breach of Contract by the University. Upon receipt of the written notice, UTRF shall cease all work associated with the Contract. Should such an event occur, UTRF shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date.
- E.4. Voluntary Buyout Program. UTRF acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a

State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
- b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
- c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: [www.state.tn.us/finance/rds/ocr/waiver.html](http://www.state.tn.us/finance/rds/ocr/waiver.html). The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

E.5. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Such procurements shall be made on a competitive basis, where practical. UTRF shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification for such decision and non-competitive procurement.

E.6. State Furnished Property. UTRF shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for UTRF's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, UTRF shall be responsible to the State for the residual value of the property at the time of loss.

E.7. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments

In the event of a discrepancy or ambiguity regarding UTRF's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.8. Workpapers Subject to Review. UTRF shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

- E.9. Public Accountability. If UTRF is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by UTRF on behalf of the State, UTRF agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and UTRF shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

- E.10. Lobbying. UTRF certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. UTRF shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

- E.11. Debarment and Suspension. UTRF certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

UTRF shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.12. Federal Economic Stimulus Funding. This Contract requires UTRF to provide products and/or services that are funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). UTRF is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of the Recovery Act are met and that UTRF provides information to the University as required.

UTRF (and any subcontractor) shall comply with the following:

- a. Federal Grant Award Documents, as applicable.
- b. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at [www.whitehouse.gov/omb/recovery\\_default/](http://www.whitehouse.gov/omb/recovery_default/), as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at [www.whitehouse.gov/omb/financial\\_offm\\_circulars/](http://www.whitehouse.gov/omb/financial_offm_circulars/).
- c. Office of Tennessee Recovery Act Management Directives (posted on the Internet at [www.tnrecovery.gov](http://www.tnrecovery.gov)).
- d. The subrecipient Contractor, if covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, agrees to specifically identify Recovery Act expenditures separately for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133.
- e. The Recovery Act, including but not limited to the following sections of that Act:
  - (1) Section 1604 – Disallowable Use. No funds pursuant to this Contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
  - (2) Section 1512 – Reporting and Registration Requirements.
    - i. The Contractor must report on use of Recovery Act funds provided through this Contract. Information from these reports will be made available to the public.
    - ii. The subrecipient Contractor must maintain current registrations in the Central Contractor Registration ([www.ccr.gov](http://www.ccr.gov)) at all times during which they have an active Contract funded with Recovery Act funds.
  - (3) Section 1553 – Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:

- i. gross mismanagement,
- ii. gross waste,
- iii. substantial and specific danger to public health or safety,
- iv. abuse of authority, or
- v. violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a Contract).

**Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration:** Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

**Requirement to Post Notice of Rights and Remedies:** The Contractor and any subcontractor shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 located at [www.recovery.gov](http://www.recovery.gov) for specific requirements of this section and prescribed language for the notices.)

- (4) **Section 902 – Access Of Government Accountability Office.** The Contractor shall provide that the Comptroller General and his representatives are authorized:
  - i. to examine any records of the Contractor or any of its subcontractors, that directly pertain to, and involve transactions relating to, this Contract or a subcontract; and
  - ii. to interview any officer or employee of the Contractor or any of its subcontractors regarding such transactions.
- (5) **Section 1514 – Inspector General Reviews.** Any inspector general of a federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.
- (6) **Section 1515 – Access of Offices of Inspector General to Certain Records and Employers.** With respect to this Contract, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
  - i. to examine any records, of the Contractor or any of its subcontractors, that pertain to and involve transactions relating or pursuant to this Contract; and
  - ii. to interview any officer or employee of the Contractor or any subcontractors regarding such transactions.
- (7) **Section 1606 – Wage Rate Requirements.** All laborers and mechanics employed by pursuant to this Contract shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference.

For purposes of this Contract, laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards.

- (8) Section 1605 – Buy American Requirements for Construction Material – Buy American, Use of American Iron, Steel, and Manufactured Goods. None of the funds provided by this Contract may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- f. UTRF agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements.
- g. If UTRF enters into one or more subcontracts for any of the services performed under this Contract, each subcontract shall contain provisions specifically imposing on the subcontractor all requirements set forth in this Contract Section E.5., "Federal Economic Stimulus Funding."
- E.13. UTRF shall not use funds received under this contract to perform or conduct basic research activities.
- E.14. Flow Down Provisions. In addition to the requirements in Section E.13, UTRF acknowledges and agrees to adhere to the federal Flow Down Provisions, issued by the federal government and attached hereto as Attachment 1 and incorporated by reference, as a condition or funding for all service and deliverables detailed in the Scope of Services under the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (Recovery Act).
- E.15. Intellectual Property. Notwithstanding any provision in this Contract to the contrary, intellectual property for any invention, including contractor material, developed through the work under the Scope of Services or generated information, whether patented or unpatented, will be the property of the entity whose employees or researchers are inventors of such invention pursuant to U.S. patent law, subject to the State obtaining a no-cost, nonexclusive, nontransferable, irrevocable, perpetual, royalty-free, worldwide license to use or have practiced such rights for or on behalf of the State for governmental purposes or for the U.S. government. All contracts between the Contractor and its subcontractors shall so provide. Previously documented inventions (whether patented or unpatented under the patent laws of the United States of America or any foreign country) are exempt from this provision.
- E.16. The State acknowledges that the Tennessee Solar Institute may continue in existence beyond the termination date of this Contract; however, any activities beyond the termination date in Section B shall be the financial responsibility of the Contractor. Additionally, the State acknowledges that the Contractor may receive funding for other activities within the Solar Institute. The Contractor agrees that any such activities will not be funded with monies provided herein and in accordance with federal guidelines, funds provided under this Contract will not be commingled with any other funds the Contractor may receive for other purposes.
- E.17. In compliance with the requirements of Chapter 878, Public Acts of 2006 of the State of Tennessee, for any contract for goods or services purchased by the University, the Contractor hereby attests that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performances of this Contract Agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the United States in the performance of the Contract.

IN WITNESS WHEREOF,

University of Tennessee Research Foundation:

\_\_\_\_\_  
CONTRACTOR SIGNATURE

\_\_\_\_\_  
DATE

Dr. Randy Gentry, President

\_\_\_\_\_  
PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

University of Tennessee:

\_\_\_\_\_  
Dr. David Millhorn, Executive Vice President

\_\_\_\_\_  
DATE



## ATTACHMENT 1

SERVICE DELIVERABLE	FY 2010	FY 2011	FY 2012
<b>Program Development</b>			
Solar Institute Implementation Plan completed. This plan shall include a plan for execution, organizational structure, staffing plan, responsibilities and budget within UTRF.	\$100,000.00	\$0.00	\$0.00
Tennessee Solar Institute website developed and launched.	\$65,000.00	\$0.00	\$0.00
Marketing plan for Solar Institute activities, including grant programs and commercialization opportunities completed.	\$50,000.00	\$0.00	\$0.00
Regional solar conferences held. (\$200,000 per conference)	\$0.00	\$200,000.00	\$200,000.00
<b>Grant Administration</b>			
Contracts Management Database created.	\$50,000.00	\$0.00	\$0.00
Grant criteria, program materials, application forms, proposal communication, application review processes, contract documents, and monitoring plan for Solar Installation Grants Program completed and approved.	\$125,000.00	\$0.00	\$0.00
Obligation of 25% Solar Installation Grants achieved	\$2,250,000.00	\$0.00	\$0.00
Obligation of 50% Solar Installation Grants achieved	\$2,250,000.00	\$0.00	\$0.00
Obligation of 75% Solar Installation Grants achieved	\$0.00	\$2,250,000.00	\$0.00
Obligation of 100% Solar Installation Grants achieved	\$0.00	\$2,250,000.00	\$0.00
Grant criteria, program materials, application forms, proposal communication, application review processes, contract documents, and monitoring plan for Solar Innovation Grants Program completed and approved.	\$140,000.00	\$0.00	\$0.00
Approval of 25% Solar Innovation Grants by merit review team achieved.	\$3,625,000.00	\$0.00	\$0.00
Approval of 50% Solar Innovation Grants by merit review team achieved.	\$0.00	\$3,625,000.00	\$0.00
Approval of 75% Solar Innovation Grants by merit review team achieved.	\$0.00	\$3,625,000.00	\$0.00
Approval of 100% Solar Innovation Grants by merit review team achieved.	\$0.00	\$3,625,000.00	\$0.00

<b>Program Operations, Reporting and Monitoring</b>			
Satisfactory monthly progress achieved as documented through monthly progress report. Monthly progress reports shall include a detailed list of all activities completed during the month including, but not limited to, operational, grant administration, workforce development; marketing, public education, strategic industry partnership development activities; a detailed monthly expense report; and any other information requested by UT pertaining to this project. (\$85,000 per monthly report)	\$430,000.00	\$1,032,000.00	\$860,000.00
Detailed quarterly financial monitoring report on Solar Institute Activities, including all information needed for 1512 Report completed and approved. (\$6,500 per report)	\$13,000.00	\$26,000.00	\$26,000.00
Detailed quarterly report of industry partnership development and technical assistance activities that show impact of activities on Tennessee businesses completed. (\$6,500 per report)	\$13,000.00	\$26,000.00	\$26,000.00
Detailed quarterly report of workforce development activities showing impact of activities on the workforce completed. (\$6,500 per report)	\$13,000.00	\$26,000.00	\$26,000.00
Detailed quarterly performance report on energy consumption activities supported by the Institute including energy savings, renewable energy installed, and GHG emission reductions. (\$6,500 per report)	\$13,000.00	\$26,000.00	\$26,000.00
Project Close-out Report completed			\$13,892.00
<b>Totals</b>	<b>\$9,137,000.00</b>	<b>\$16,711,000.00</b>	<b>\$1,177,892.00</b>

<b>Total</b>	<b>\$27,025,892.00</b>
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## **ATTACHMENT 2**

### **SUBGRANT FLOW DOWN PROVISIONS FOR STATE GOVERNMENTS**

**Resolution of Conflicting Conditions**

**Statement of Federal Stewardship**

**Site Visits**

**Reporting Requirements**

**Publications**

**Federal, State, and Municipal Requirements**

**Intellectual Property Provisions and Contact Information**

**Lobbying Restrictions**

**Notice Regarding the Purchase of American-Made Equipment and Products -- Sense of Congress**

**Decontamination and/or Decommissioning (D&D) Costs**

**Historic Preservation**

**Flow Down Terms For ARRA Awards – See Prescriptions for Applicability**

**Special Provisions Relating To Work Funded Under American Recovery and Reinvestment Act of 2009**

**Reporting and Registration Requirements Under Section 1512 of The Recovery Act**

Required Use of American Iron, Steel, and Manufactured Goods (Covered Under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009

Wage Rate Requirements Under Section 1606 Of The Recovery Act

Recovery Act Transactions Listed In Schedule of Expenditures of Federal Awards and Recipient Responsibilities For Informing Subrecipients

Davis Bacon Act Requirements

**From 10 CFR 600.236-Procurement**

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and sub-grantees will follow paragraphs (b) through (i) in this section.

Note: 600.236 (i)-Contract provisions. A grantee's and sub-grantee's contracts MUST contain provisions in paragraph (i) of this section (1) through (13).

10 CFR 600.236 -- <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=1d87da29f6087f0251f78954c8888f1&rgn=div8&view=text&node=10:4.0.1.3.9.3.20.23&idno=10>

**From 10 CFR 600.237-Subgrants**

Retention and Access Requirements for Records

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=4e22613d54c8ee557f9dc9d6015ec1c9;idno=10;region=DIV1;q1=600.242;rgn=div8;view=text;node=10%3A4.0.1.3.9.3.20.27>

Conform any advances of grant funds to sub-grantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies (refer state to 10 CFR 600.221(c).

*10 CFR 60.221(c) Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

DRAFT

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## SPECIAL TERMS AND CONDITIONS FOR USE IN MOST GRANTS AND COOPERATIVE AGREEMENTS

### RESOLUTION OF CONFLICTING CONDITIONS – MANDATORY FLOW DOWN REQUIRED

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

### AWARD AGREEMENT TERMS AND CONDITIONS

This award/agreement consists of the Grant and Cooperative Agreement cover page, plus the following:

a. Special terms and conditions.

b. Attachments:

Attachment No.	Title
1	Intellectual Property Provisions
2	Federal Assistance Reporting Checklist
3	Budget Pages
4	State Annual File
5	State Master File
6	Wage Determination

c. Applicable program regulations [*Specify*] [*Date*]

d. DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov> and if the award is for research and to a university or non-profit, the Research Terms & Conditions and the DOE Agency Specific Requirements at <http://www.nsl.gov/bfa/dias/policy/rtc/index.jsp>.

e. Application/proposal as approved by DOE.

f. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at [http://management.energy.gov/business\\_doe/1374.htm](http://management.energy.gov/business_doe/1374.htm).

### PAYMENT PROCEDURES - ADVANCES THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM

a. Method of Payment. Payment will be made by advances through the Department of Treasury's ASAP system.

b. Requesting Advances. Requests for advances must be made through the ASAP system. You may submit requests as frequently as required to meet your needs to disburse funds for the Federal share of project costs. If feasible, you should time each request so that you receive payment on the same day that you disburse funds for direct project costs and the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close as is administratively feasible to actual disbursements.

c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those

funds before requesting additional cash payments from DOE.

d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

#### REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS

a. If actual allowable indirect costs are less than those budgeted and funded under the award, you may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, you must refund the difference.

b. Recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates. DOE recognizes that the inability to obtain full reimbursement for indirect costs means the recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.

#### USE OF PROGRAM INCOME - ADDITION

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and use it to further eligible project objectives.

#### STATEMENT OF FEDERAL STEWARDSHIP - MANDATORY FLOW DOWN REQUIRED

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

#### SITE VISITS - MANDATORY FLOW DOWN REQUIRED

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

#### REPORTING REQUIREMENTS -- MANDATORY FLOW DOWN REQUIRED

a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award.



Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

b. Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge ([www.osti.gov/bridge](http://www.osti.gov/bridge)), unless the report contains patentable material, protected data, or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database ([www.osti.gov/energycitations](http://www.osti.gov/energycitations))

c. Restrictions. Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

#### PUBLICATIONS – MANDATORY FLOW DOWN REQUIRED

a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

b. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number DE-EE0000095

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

#### FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS – MANDATORY FLOW DOWN REQUIRED

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

#### INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION – MANDATORY FLOW DOWN REQUIRED

a. The intellectual property provisions applicable to this award are provided as an attachment to

this award or are referenced on the Agreement Face Page. A list of all intellectual property provisions may be found at [http://www.gc.doe.gov/financial\\_assistance\\_awards.htm](http://www.gc.doe.gov/financial_assistance_awards.htm).

b. Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at [http://www.gc.doe.gov/documents/Intellectual\\_Property\\_\(IP\)\\_Service\\_Providers\\_for\\_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf)

#### LOBBYING RESTRICTIONS – MANDATORY FLOW DOWN REQUIRED

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

#### NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS – MANDATORY FLOW DOWN REQUIRED

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

#### DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS – MANDATORY FLOW DOWN REQUIRED

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the recipient's facilities, or (ii) any costs which may be incurred by the recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

#### HISTORIC PRESERVATION -- MANDATORY FLOW DOWN REQUIRED

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>.

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

Prescription: This clause must be included in all grants, cooperative agreements and TIAs (new or amended) when funds appropriated under the Recovery Act are obligated to the agreement.

## SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

### Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

### Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds – the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

#### Special Provisions

##### A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

##### B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

##### C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

##### D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized –

**From 10 CFR 600.236-Procurement**

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and sub-grantees will follow paragraphs (b) through (i) in this section.

Note: 600.236 (i)-Contract provisions. A grantee's and sub-grantee's contracts MUST contain provisions in paragraph (i) of this section (1) through (13).

10 CFR 600.236 -- <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=1d87da29f6087f0251f78954c8888ff1&rgn=div8&view=text&node=10:4.0.1.3.9.3.20.23&idno=10>

**From 10 CFR 600.237-Subgrants**

Retention and Access Requirements for Records

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=4c22613d54c8ee557f9dc9d6015e1c9;idno=10;region=DIV1;q1=600.242;rgn=div8;view=text;node=10%3A4.0.1.3.9.3.20.27>

Conform any advances of grant funds to sub-grantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies (refer state to 10 CFR 600.221(c)).

*10 CFR 60.221(c) Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

#### Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov), maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

#### F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

**Prohibition on Reprisals:** An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee or other person working for the employer who has the authority to investigate, discover or terminate misconduct, a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
  - a gross waste of covered funds
  - a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
  - an abuse of authority related to the implementation or use of covered funds;
- or
- as violation of law, rule, or regulation related to an agency contract

(including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, [www.Recovery.gov](http://www.Recovery.gov), for specific requirements of this section and prescribed language for the notices.).

G. Request for Reimbursement (this version is included in WAP/SEP awards with states)

RESERVED

H. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct

involving those funds.

#### I. Information in supporting of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

#### J. Availability of Funds

Funds appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until September 30, 2015.

Prescription: The following award term shall be used to implement the recipient reporting and registration requirements in the Recovery Act section 1512.

#### **REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT**

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

Prescription: When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work and the total project value is estimated less than \$7,443,000, the agency shall use this award term.



## REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS -- SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) Definitions. As used in this award term and condition--

(1) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been--

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference. (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111--5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

[ Award official to list applicable excepted materials or indicate "none" ]

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that--

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act. (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including--

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

**Foreign and Domestic Items Cost Comparison**

Description	Unit of measure	Quantity	Cost
(dollars)*			

Item 1:

Foreign steel, iron, or manufactured good \_\_\_\_\_

Domestic steel, iron, or manufactured good \_\_\_\_\_

Item 2:

Foreign steel, iron, or manufactured good \_\_\_\_\_

Domestic steel, iron, or manufactured good \_\_\_\_\_

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\*Include all delivery costs to the construction site.]

Prescription: When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work with a total project value over \$7,445,000 that involves iron, steel, and/or manufactured goods materials covered under international agreements, the agency shall use this award term.

# REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) — SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) *Definitions.* As used in this award term and condition—

*Designated country* —(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

*Designated country iron, steel, and/or manufactured goods* —(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

*Domestic iron, steel, and/or manufactured good* —(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

*Foreign iron, steel, and/or manufactured good* means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

*Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

*Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State

and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

*Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

[ Award official to list applicable excepted materials or indicate "none" ]

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods.. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

#### Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

*[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if none, attach summary.]*

*[Include other applicable supporting information.]*

*[\*Include all delivery costs to the construction site.]*

Prescription: When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use this award term.

#### WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or

assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

Prescription: The award term described in this section shall be used by agencies to clarify recipient responsibilities regarding tracking and documenting Recovery Act expenditures.

#### RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A--102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A--102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF--SAC) required by OMB Circular A--133. OMB Circular A--133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the

Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF--SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF--SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

Prescription: Include for ARRA awards when WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT article is used.

#### DAVIS BACON ACT REQUIREMENTS

**A. Definitions.** For purposes of this term, the Contract Work Hours and Safety Standards Act term, and the Recipient Functions term, the following definitions are applicable:

(1) *Award* means the Award by the Department of Energy (DOE) to a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Subrecipients, Contractors and subcontractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act.

(2) *"Construction, alteration or repair"* means all types of work done by laborers and mechanics employed by the Subrecipient, construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(a) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(b) Painting and decorating; or



(c) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work.

(3) *Contract* means a written procurement contract executed by a Subrecipient for the acquisition of property and services for construction, alteration, and repair under a Subaward. For purposes of these terms, a Contract shall include subcontracts and lower-tier subcontracts under the Contract.

(4) *Contracting Officer* means the DOE official authorized to execute awards on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(5) *Contractor* means an entity that enters into a Contract. For purposes of these terms, Contractor shall include subcontractors and lower-tier subcontractors.

(6) *Recipient* means any entity other than an individual that receives Recovery Act funds in the form of a grant directly from the Federal Government. The term includes the State that receives an Award from DOE and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(7) *"Site of the work"*—

(a) Means—

(i) The physical place or places where the construction called for in the Award, Subaward, or Contract will remain when work on it is completed; and

(ii) Any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the project;

(b) Except as provided in paragraph (c) of this definition, the site of the work includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(1) They are dedicated exclusively, or nearly so, to performance of the project; and

(2) They are adjacent or virtually adjacent to the site of the work as defined in paragraphs (7)(a)(i) or (7)(a)(ii) of this definition; and

(c) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular contract or Federal Award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the project site as defined in paragraphs (7)(a)(i) or (7)(a)(ii) of this definition, are not included in the "site of the



work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of an Award, Subaward, or Contract.

(8) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient’s procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of “Award” above.

(9) *Subrecipient* means a non-Federal entity that expends Federal awards received from a pass-through entity [Recipient] to carry out a Federal program but does not include an individual that is a beneficiary of such a program. The term includes a Community Action Agency (CAA), local agency, or other entity to which a Subaward under the Award is made by a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the DBA work performed by all laborers and mechanics employed by contractors and subcontractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant of the Recovery Act.

#### ***B. Davis-Bacon Act***

(1)(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached to the Subaward or Contract and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Recipient, a Subrecipient, or Contractor and such laborers and mechanics.

(i) *Applicable to Recipient Only:* Prior to the issuance of the Subaward or Contract the Recipient shall notify the Contracting Officer of the site of the work in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

(ii) If the Subaward or Contract is or has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

(b) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the DBA on behalf of laborers or mechanics are considered wages paid to such laborers and mechanics, subject to the provisions of paragraph B(4) below; also, regular contributions made or costs incurred for more than a weekly period (but not less

often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(c) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the paragraph entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(d) The wage determination (including any additional classifications and wage rates conformed under paragraph B(2) of this term) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Subrecipient and Contractor at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2)(a) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Subaward or Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Subrecipient (and Contractor, when applicable) and the laborers and mechanics to be employed in the classification (if known), or their representatives agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of this agreement. If the Contracting Officer agrees with the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the

Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(c) In the event the Subrecipient (and Contractor, when applicable), and the laborers or mechanics to be employed in the classification, or their representatives, do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of the disagreement. The Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs B(2)(b) or B(2)(c) of this Term shall be paid to all workers performing work in the classification under the Award, Subaward, or Contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the Award, Subaward, or Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Subrecipient and Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Subrecipient or Contractor does not make payments to a trustee or other third person, the Subrecipient or Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Subrecipient or Contractor that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Subrecipient or Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

### ***C. Rates of Wages***

(1) The minimum wages to be paid laborers and mechanics under the Subaward or Contract involved in performance of work at the project site, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are included as an attachment to the Award, Subaward, or Contract.

(2) If the Subaward or Contract has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

### ***D. Payrolls and Basic Records***

(1) Payrolls and basic records relating thereto shall be maintained by the Recipient, Subrecipient and Contractor during the course of the work and preserved for a period of 3

years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (4) of the provision entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Subrecipient or Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Subrecipient or Contractor employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2)(a) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Subrecipient. The Subrecipient shall submit weekly for each week in which any Subaward or Contract work is performed a copy of all payrolls to the Recipient. The Recipient shall submit weekly for each week in which any Subaward or Contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph D(1) of this Term, except that the full social security numbers and home addresses shall not be included on weekly transmissions. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

(b) The Recipient is responsible for ensuring that all Subrecipients and Contractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this Term. The Subrecipient is responsible for ensuring all Contractors, including lower tier subcontractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this term. Subrecipients and Contractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request for transmission to the Contracting Officer, the Recipient, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. The Recipient shall also obtain and provide the full social security number and current address of each covered worker upon request by the Contracting Officer or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Recipient to require a Subrecipient or Contractor to provide addresses and social security numbers to the Recipient for its own records, without weekly submission to the Contracting Officer.

(c) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Recipient, Subrecipient or Contractor or his or her agent who pays or supervises the payment of the persons employed under the Subaward or Contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph D(2)(a) of this Term, the appropriate information is being maintained under paragraph D(1) of this Term, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Subaward or Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Subaward or Contract.

(d) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph D(2)(c) of this Term.

(e) The falsification of any of the certifications in Paragraph D, Payrolls and Basic Records, of this Term may subject the Recipient, Subrecipient or Contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Recipient, Subrecipient, or Contractor shall make the records required under paragraph D(1) of this Term available for inspection, copying, or transcription by the Contracting Officer, authorized representatives of the Contracting Officer, or the Department of Labor. The Subrecipient or Contractor shall permit the Contracting Officer, authorized representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Recipient, Subrecipient, or Contractor fails to submit the required records or to make them available, the Contracting Officer may, after written notice to the Recipient, Subrecipient, or Contractor take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### ***E. Withholding of Funds***

(1) The DOE Contracting Officer shall, upon his or her or its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Recipient or any other contract or Federal Award with the same Recipient, on this or any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Recipient so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subrecipient or a Contractor the full amount of wages required by the Award or Subaward or a Contract. In the event of failure to

pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Award or Subaward or a Contract, the Contracting Officer may, after written notice to the Recipient take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) The Recipient shall, upon its own action or upon written request of the DOE Contracting Officer or an authorized representative of the Department of Labor, withhold or cause to be withheld from any Subrecipient or Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subrecipient or Contractor the full amount of wages required by the Subaward or Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Subaward or Contract, the Recipient may, after written notice to the Subrecipient or Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased or the Government may cause the suspension of any further payment under any other contract or Federal award with the same Subrecipient or Contractor, on any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Subrecipient or Contractor.

#### ***F. Apprentices and Trainees***

##### **(1) Apprentices.**

(a) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(b) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Subrecipient or Contractor as to the entire work force under the registered program.

(c) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph F(1) of this Term, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted

under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(d) Where a Subrecipient or Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Subrecipient's or Contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(e) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(f) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Subrecipient or Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) Trainees.

(a) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(b) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship/training program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.



(c) In the event OATELS withdraws approval of a training program, the Subrecipient or Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this Term shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### ***G. Compliance with Copeland Act Requirements***

The Recipient, Subrecipient or Contractor shall comply with the requirements of 29 CFR Part 3 which are hereby incorporated by reference in the Award, Subaward or Contract.

#### ***H. Subawards and Contracts***

(1) The Recipient, the Subrecipient and Contractor shall insert in the Subaward or any Contracts this Term entitled "Davis Bacon Act Requirements" and such other terms as the Contracting Officer may require. The Recipient shall be responsible for ensuring compliance by any Subrecipient or Contractor with all of the requirements contained in this Term. The Subrecipient shall be responsible for the compliance by Contractor with all of the requirements contained in this Term.

(2) Within 14 days after issuance of a Subaward, the Recipient shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each Subaward and Contract for construction within the United States, including the Subrecipient's and Contractor's signed and dated acknowledgment that this Term has been included in the Subaward and any Contracts. The SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413.e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413.e.pdf). Within 14 days after issuance of a Contract or lower-tier subcontract, the Subrecipient shall deliver to the Recipient a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each Contract and lower-tier subcontract for construction within the United States, including the Contractor and lower-tier subcontractor's signed and dated acknowledgment that this Term has been included in any Contract and lower-tier subcontracts. SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413.e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413.e.pdf). The Recipient shall immediately provide to the DOE Contracting Officer the completed Standard Forms (SF) 1413.

#### ***I. Contract Termination—Debarment***

A breach of these provisions may be grounds for termination of the Award, Subaward, or Contract and for debarment as a Contractor or subcontractor as provided in 29 CFR 5.12.

#### ***J. Compliance with Davis-Bacon and Related Act Regulations***

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in the Award, Subaward or Contract.



***K. Disputes Concerning Labor Standards***

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and shall not be subject to any other dispute provision that may be contained in the Award, Subaward, and Contract. Disputes within the meaning of this Term include disputes between the Recipient, Subrecipient (including any Contractor) and the Department of Energy, the U.S. Department of Labor, or the employees or their representatives.

***L. Certification of Eligibility.***

(1) By entering into this Award, Subaward, or Contract (as applicable), the Recipient, Subrecipient, or Contractor, respectively certifies that neither it (nor he or she) nor any person or firm who has an interest in the Recipient, Subrecipient, or Contractor's firm, is a person, entity, or firm ineligible to be awarded Government contracts or Government awards by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(2) No part of this Award, Subaward or Contract shall be subcontracted to any person or firm ineligible for award of a Government contract or Government award by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

***M. Approval of Wage Rates***

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under an Award, Subaward or Contract must be submitted for approval in writing by the head of the federal contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the Award, Subaward or Contract. Any amount paid by the Subrecipient or Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Subrecipient or Contractor and shall not be reimbursed by the Recipient or Subrecipient. If the Government refuses to authorize the use of the overtime, the Subrecipient or Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

***Contract Work Hours and Safety Standards Act***

This Term entitled "Contract Work Hours and Safety Standards Act (CWHSSA)" shall apply to any Subaward or Contract in an amount in excess of \$100,000. As used in this CWHSSA Term, the terms laborers and mechanics include watchmen and guards.

A. Overtime requirements. No Subrecipient or Contractor contracting for any part of the Subaward work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer

or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the term set forth in paragraph B herein, the Subrecipient or Contractor responsible therefor shall be liable for the unpaid wages. In addition, such Subrecipient or Contractor shall be liable to the United States (in the case of work done under a Subaward or Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provision set forth in CWSSHA paragraph A, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the term set forth in paragraph (A) of this section.

C. Withholding for unpaid wages and liquidated damages.

(1) The DOE Contracting Officer shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Recipient on this or any other Federal Award or Federal contract with the same Recipient on any other federally-assisted Award or contract subject to the CWHSSA, which is held by the same Recipient such sums as may be determined to be necessary to satisfy any liabilities of such Recipient for unpaid wages and liquidated damages as provided in the term set forth in CWHSSA, paragraph B of this Term.

(2) The Recipient shall upon its own action or upon written request of the DOE Contracting Officer or an authorized representative of the Department of Labor, withhold or cause from any moneys payable on account of work performed by the Subrecipient or Contractor on this or any other federally assisted subaward or contract subject to the CWHSSA, which is held by the same Subrecipient or Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Subrecipient or Contractor for unpaid wages and liquidated damages as provided in term set forth in CWHSSA, paragraph B of this Term.

D. Subcontracts. The Subrecipient shall insert in a Contract and a Contractor shall insert in any lower tier subcontracts, the terms set forth in these CWHSSA paragraphs (A) through (D) and also a provision requiring the Contractors to include this CWHSSA Term in any lower tier subcontracts. The Recipient shall be responsible for compliance by any Subrecipient or Contractor, with the CWHSSA paragraphs A through D. The Subrecipient shall be responsible for compliance by any Contractor (including lower- tier subcontractors).

E. The Subrecipient or Contractor shall maintain payrolls and basic payrolls in accordance with Davis-Bacon Act Requirements term, for all laborers and mechanics, including guards and watchmen working on the Subaward or Contracts. These records are subject to the requirements set forth in the Davis Bacon Requirements term.



GENERAL ASSEMBLY OF THE STATE OF TENNESSEE  
FISCAL REVIEW COMMITTEE

320 Sixth Avenue, North – 8<sup>th</sup> Floor  
NASHVILLE, TENNESSEE 37243-0057  
615-741-2564

Sen. Bill Ketron, Chairman  
Senators

Douglas Henry  
Doug Jackson  
Brian Kelsey  
Randy McNally, *ex officio*  
Lt. Governor Ron Ramsey, *ex officio*

Reginald Tate  
Ken Yager

Rep. Charles Curtiss, Vice-Chairman  
Representatives

Harry Brooks  
Curtis Johnson  
Steve McManus  
Mary Pruitt  
Craig Fitzhugh, *ex officio*  
Speaker Kent Williams, *ex officio*

Bk  
cc

TO: Dr. Jan Simek, Acting President  
University of Tennessee

FROM: Bill Ketron, Chairman, Fiscal Review Committee  
Charles Curtiss, Vice-Chairman, Fiscal Review Committee

DATE: January 26, 2010

SUBJECT: **Contract Comments**  
(Fiscal Review Committee Meeting 1/25/10)

RFS# N/A

Department: University of Tennessee

Contractor: University of Tennessee Research Foundation (UTRF)

Summary: The proposed contract is for the provision of administrative and programmatic support for the implementation of the initiatives detailed in the U.S. Department of Energy's State Energy Program ARRA grant awarded to the Department of Economic and Community Development. The proposed contract has a term beginning February 1, 2010, and ending April 30, 2012. UTRF will establish and administer a "Solar Opportunity Fund" and conduct workforce development sessions to promote the solar network.

Maximum liability: \$29,276,682

After review, the Fiscal Review Committee voted to postpone action on the contract until the next scheduled meeting.

cc: Ms. Mary McDonald, Director of Contracts, University of Tennessee